

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

David Barron, :
Petitioner, : Case No. 1:23-cv-591
v. : Judge Susan J. Dlott
Warden, Madison Correctional : Order Vacating February 14, 2024 Order
Institution, : and Judgment
Defendant. :

On January 11, 2024, the Court issued an Order Deferring Ruling on the Report and Recommendation for Thirty Days to give Petitioner one final chance to correctly file a habeas corpus petition. (Doc. 10.) Then, on February 14, 2024, when it appeared that Barron had abandoned his case by failing to comply with the Court's admonition in the Order Deferring Ruling, the Court issued an Order Adopting Report and Recommendation and Dismissing Action for failure to prosecute. (Doc. 11.) The Clerk of Court issued the Judgment that same day. (Doc. 12.)

However, on February 15, 2024, the Clerk of Court received and filed a Petition for Writ of Habeas Corpus ("Habeas Petition") from Petitioner David Barron. (Doc. 13.) The Habeas Petition was signed by Barron under penalty of perjury and placed in the prison mailing system on February 8, 2024. (*Id.* at PageID 48.) "Under the prison mailbox rule, a *habeas* petition is considered filed when the prisoner provides the petition to prison officials for filing." *Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 456 (6th Cir. 2012). Therefore, the Court must treat Barron's Habeas Petition as if it was filed on February 8, 2024, which is within the thirty-day deadline set by the Court in its January 11, 2024 Order Deferring Ruling. In hindsight, the Court

should not have dismissed this case for failure to prosecute.

The February 14, 2024 Order Adopting Report and Recommendation and Dismissing Action (Doc. 11) and the Judgment (Doc. 12) are **VACATED**. The case shall proceed forward on the docket of the Undersigned Judge and Magistrate Judge Peter B. Silvain, Jr.

IT IS SO ORDERED.

BY THE COURT:

S/Susan J. Dlott
Susan J. Dlott
United States District Judge